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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 MONEY MAILER, LLC,

10 Plaintiff,

11 v.

12 WADE G. BREWER,

13 Defendant.

14 WADE G. BREWER,

15 Counterclaim Plaintiff,

16 v.

17 MONEY MAILER, LLC, *et al.*,

18 Counterclaim Defendants.

NO. C15-1215RSL

ORDER GRANTING IN PART  
MONEY MAILER'S MOTION TO  
DISMISS COUNTER/CROSS-  
CLAIMS AND GRANTING LEAVE  
TO AMEND

19 This matter comes before the Court on "Counterclaim Defendants' Partial Motion to  
20 Dismiss." Dkt. # 140. On July 31, 2015, Money Mailer, LLC ("MMLLC"), sued Wade Brewer  
21 for breach of contract and monies owed. Brewer was a former franchisee of Money Mailer  
22 Franchise Corporation ("MMFC"), a company that shares owners, officers, and directors with  
23 MMLLC. As part of the Franchise Agreement, Brewer was required to purchase goods and  
24 service from MMLLC, an arrangement which resulted in the debt that MMLLC is attempting to  
25 collect in this lawsuit. Brewer suspected that MMLLC and MMFC had colluded to mark up  
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1 charges for printing and other services without adequate disclosure and filed counter/cross  
2 claims against the two companies on September 17, 2015. Two years later, Brewer filed an  
3 unopposed motion to amend his answer to assert crossclaims against four individual owners,  
4 officers, and/or directors of MMFC and MMLLC. The amended answer was filed on December  
5 11, 2017. All counter/crossclaim defendants have taken the opportunity to file a motion to  
6 dismiss.<sup>1</sup>

7 MMLLC, MMFC, and the individual crossclaim defendants (collectively, Money Mailer)  
8 seek dismissal of most of the claims against them, arguing that the claims are barred by the  
9 statutes of limitations and/or are inadequately pled. The question for the Court on a motion to  
10 dismiss is whether the facts alleged in the complaint sufficiently state a “plausible” ground for  
11 relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

12 A claim is facially plausible when the plaintiff pleads factual content that allows  
13 the court to draw the reasonable inference that the defendant is liable for the  
14 misconduct alleged. Plausibility requires pleading facts, as opposed to conclusory  
15 allegations or the formulaic recitation of elements of a cause of action, and must  
16 rise above the mere conceivability or possibility of unlawful conduct that entitles  
17 the pleader to relief. Factual allegations must be enough to raise a right to relief  
18 above the speculative level. Where a complaint pleads facts that are merely  
consistent with a defendant’s liability, it stops short of the line between possibility  
and plausibility of entitlement to relief. Nor is it enough that the complaint is  
factually neutral; rather, it must be factually suggestive.

19 Somers v. Apple, Inc., 729 F.3d 953, 959-60 (9th Cir. 2013) (internal quotation marks and  
20 citations omitted). All well-pleaded factual allegations are presumed to be true, with all  
21 reasonable inferences drawn in favor of the non-moving party. In re Fitness Holdings Int’l, Inc.,  
22 714 F.3d 1141, 1144-45 (9th Cir. 2013). If the complaint fails to state a cognizable legal theory  
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24 <sup>1</sup> The fact that MMLLC and MMFC did not challenge the adequacy of the original pleading does  
25 not preclude this motion. In the Ninth Circuit, if an amended pleading is filed, even one which carries  
26 over the causes of action of the original pleading, the opposing parties are free to challenge the entire  
pleading. See Sidebotham v. Robison, 216 F.2d 816, 823 (9th Cir. 1954).

1 or fails to provide sufficient facts to support a claim, dismissal is appropriate. Shroyer v. New  
2 Cingular Wireless Servs., Inc., 622 F.3d 1035, 1041 (9th Cir. 2010).

3 Having reviewed the First Amended Answer, Affirmative Defenses, and Counterclaims  
4 (Dkt. # 139) and the memoranda submitted by the parties,<sup>2</sup> the Court finds as follows:

5 **A. Statutes of Limitation**

6 “The district court may grant a 12(b)(6) motion to dismiss on statute of limitations  
7 grounds only if the assertions of the complaint, read with the required liberality, would not  
8 permit the plaintiff to prove that the statute was tolled.” Morales v. City of Los Angeles, 214  
9 F.3d 1151, 1153 (9th Cir. 2000) (internal quotation marks and citations omitted). Dismissal of  
10 the FIPA, CPA, misrepresentation, civil conspiracy, and/or unjust enrichment claims on  
11 limitations grounds is not appropriate here. Brewer has pled facts from which he can plausibly  
12 argue that, exercising reasonable diligence, he learned that Money Mailer had misrepresented  
13 facts regarding the sustainability of the large franchise model, had misrepresented its intentions  
14 regarding credits, buy backs, and/or debt forgiveness, and was overcharging for printing services  
15 (among other things)<sup>3</sup> long after the parties signed the Franchise Agreement in 2011 and within  
16 the applicable limitations periods. Brewer cannot be faulted for initially assuming that Money  
17 Mailer would follow the law. The allegations of the amended counter/crossclaims do not  
18 foreclose the possibility that the limitations periods were tolled.

19 **B. Declaratory Judgment**

20 To the extent Brewer’s declaratory judgment cause of action simply seeks a declaration  
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22 <sup>2</sup> This matter can be resolved on the papers submitted. The parties’ requests for oral argument are  
23 DENIED.

24 <sup>3</sup> The fact that Money Mailer disclosed how much it was going to charge for printing services in  
25 its offering materials does not establish its statute of limitations defense. Brewer’s claims regarding  
26 printing costs arise from the fact that Money Mailer charged him far more for printing services than it  
27 was paying, creating a hidden profit center within the franchise relationship. This disparity was not  
28 disclosed in the offering materials.

1 that Money Mailer is liable under other statutory or common law theories, it is duplicative and  
2 would serve no purpose in this litigation. However, Brewer also seeks a declaration regarding  
3 the validity and enforceability of the myriad agreements he negotiated with MMFC and/or  
4 MMLLC, including the Franchise Agreement. That relief is not necessarily duplicative of that  
5 which is available through the other causes of action and has the potential to resolve on-going  
6 disputes regarding Brewer's debts and the parties' obligations under those agreements. This  
7 cause of action will not be dismissed.

### 8 **C. Breach of the Franchise Agreement**

9 Brewer's sixth cause of action states that Money Mailer breached "the Franchise  
10 Agreement, amendments thereto, and related agreements." Dkt. # 139 at ¶ 8.2. He has not,  
11 however, identified any provision of the Franchise Agreement that was breached. To the extent  
12 he is arguing that Money Mailer misrepresented the financial viability of the large franchise  
13 model or temporarily boosted the franchise's income to make it appear profitable and induce  
14 Brewer to sign the Franchise Agreement, those facts may give rise to other causes of action, but  
15 they do not establish a breach of the contract terms.

16 Brewer has adequately alleged breaches of subsequent agreements modifying the initial  
17 arrangement between the parties, however, including agreements to work together as a team to  
18 resolve the problems Brewer was facing, promises to transfer zones, reduce Brewer's debt,  
19 and/or credit Brewer's account, and a management agreement.<sup>4</sup>

### 20 **D. Civil Conspiracy**

21 "To state a claim for conspiracy, a plaintiff must plead (1) that two or more people  
22 combined to accomplish an unlawful purpose, or that they combined to accomplish a lawful  
23 purpose by unlawful means; and (2) that they entered into an agreement to accomplish the  
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25 <sup>4</sup> Brewer asserts separate causes of action related to an agreement reached in March 2013, a  
26 consulting fee agreement, and violations of the Purchase Agreement through which Brewer obtained  
27 customer lists.

1 conspiracy.” Perkumpulan Inv'r Crisis Ctr. Dressel--WBG v. Regal Fin. Bancorp, Inc., 781 F.  
2 Supp.2d 1098, 1116 (W.D. Wash. 2011). It is undisputed that MMFC and MMLLC are separate  
3 legal entities. Brewer alleges that the two companies, through their overlapping owners, officers,  
4 and directors, agreed on a scheme to negotiate and charge printing, production, mailing, freight,  
5 and delivery fees that were well above the actual cost of the services provided in order to create  
6 a secret profit center within the franchise relationship. The Court finds that Brewer has  
7 adequately alleged each of the elements of a civil conspiracy.

8 MMFC and MMLLC argue that they are not two separate legal “persons” under  
9 Washington law. In the context of this motion to dismiss, the Court accepts Brewer’s allegations  
10 as true. If MMFC and MMLLC intend to contradict those allegations, the issue can be raised in a  
11 summary judgment motion. Their argument seems to be that, because Brewer alleges that they  
12 abused the corporate form to such an extent that MMFC and MMLLC should both be considered  
13 the franchisor for purposes of FIPA, they cease to be separate legal entities capable of conspiring  
14 with each other. No persuasive authority is offered in support of this argument. The three cases  
15 cited by MMFC and MMLLC (Dkt. # 140 at 15) are distinguishable in that they involve either a  
16 Sherman Antitrust claim or an alleged conspiracy between an individual/corporation and its  
17 wholly-owned subsidiary. According to the franchise disclosure statement given to Brewer,  
18 MMFC and MMLLC are sister companies. If, as Brewer alleges, the companies conspired to  
19 create and hide unlawful profit centers to the detriment of MMFC’s franchisees, there does not  
20 appear to be any rule of law or equity that would preclude a civil conspiracy claim.

#### 21 **E. Aiding and Abetting**

22 Brewer alleges that MMLLC aided and abetted MMFC’s tortious conduct based on the  
23 same acts that underlie the civil conspiracy claim. This claim may proceed.

#### 24 **F. Unjust Enrichment**

25 Brewer alleges that Money Mailer overcharged him for all sorts of services, collecting  
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1 and keeping monies to which it was not entitled. He has adequately stated a claim for unjust  
2 enrichment related to these charges. If Brewer intends to pursue an unjust enrichment claim  
3 related to any other conduct (such as Money Mailer's acquisition of customer lists), he must  
4 amend the answer to make that intention clear.

5 **G. Claims Against Individual Defendants**

6 Brewer alleges that the individual defendants are owners, officers, and/or directors of  
7 both MMFC and MMLLC, that they, working through the corporate entities, "negotiated"  
8 charges for mandatory services such that the corporations would make undisclosed profits from  
9 franchisees, that they provided materially misleading information and documents related to the  
10 original Franchise Agreement, and that they misrepresented subsequent proposals and  
11 opportunities to induce Brewer to incur more debt in a fruitless effort to make the franchise  
12 profitable and/or to avoid termination of the franchise. To the extent the individual defendants  
13 personally participated in wrongdoing, they can be held liable for their actions even if those  
14 actions were taken on behalf of the corporate entities and in the scope of their employment.  
15 Johnson v. Harrigan-Peach Land Dev. Co., 79 Wn.2d 745, 751-52 (1971).

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1 For all of the foregoing reasons, Money Mailer's motion to dismiss claims as barred by  
2 the statutes of limitation and/or for failure to state a claim upon which relief can be granted is  
3 GRANTED in part and DENIED in part. If Brewer intends to assert a breach of contract claim  
4 related to the Franchise Agreement, he must, within fourteen days of the date of this order,  
5 amend his counter/crossclaims to identify the provision of the Franchise Agreement that was  
6 breached. If Brewer intends to assert an unjust enrichment claim based on any conduct other  
7 than the overcharges for printing and other services, he must, within fourteen days of the date of  
8 this order, amend his counter/crossclaims to identify the benefits Money Mailer received and any  
9 other facts necessary to prove that it would be unjust to allow Money Mailer to retain the  
10 benefits. The counter/crossclaims may proceed in all other respects.

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12 Dated this 23rd day of April, 2018.

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14 Robert S. Lasnik  
15 United States District Judge  
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